

# **EXHIBIT 4**

5-5-06 Siegelman trial, Bailey testimony.txt  
1

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE MIDDLE DISTRICT OF ALABAMA  
3 NORTHERN DIVISION  
4

5 UNITED STATES OF AMERICA,

6 vs. CASE NO: 2:05cr119-F

7 DON EUGENE SIEGELMAN,  
8 RICHARD M. SCRUSHY,  
9 PAUL MICHAEL HAMRICK,  
and GARY MACK ROBERTS,

10 Defendants.

11 \* \* \* \* \*

12 EXCERPTS OF TRIAL PROCEEDINGS

13 \* \* \* \* \*

14 TESTIMONY AND PROCEEDINGS before The  
15 Honorable Mark E. Fuller, United States District  
16 Judge, and a jury, at the United States Federal  
17 Courthouse, One Church Street, Montgomery,  
18 Alabama, reported by Dee Coker, Registered  
19 Professional Reporter and Commissioner for the  
20 State of Alabama, commencing on Friday, May 5,  
21 2006, commencing at approximately 9:00 a.m.

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1 (Jury not present)

2 MR. LEACH: Good morning, Your Honor.

3 THE COURT: I understand before the  
4 jury is brought in -- and the  
5 record should reflect that we are  
6 both out of the hearing and the

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need to as long as it's relevant,

but we will finish this witness  
today.

All right. Let's get  
Mr. Bailey in the courtroom.  
Let's let him come in first and  
then bring the jury in.

(Mr. Bailey present)

(Jury present)

THE COURT: If everyone will be seated,  
Mr. Leach, you may continue with  
cross of this witness.

MR. LEACH: May it please the Court.

CROSS-EXAMINATION (continuing)

BY MR. LEACH:

Q. Good morning, Mr. Bailey.

A. Good morning.

30

Q. Mr. Bailey, at the time that you first knew  
of contact between Richard Scrushy and  
Governor Siegelman, did you know at that time  
that Richard Scrushy was a philanthropist?

A. Would you define philanthropist for me, sir?

Q. Someone that gives to the community, to the  
state, the colleges, somebody who regularly  
donates in large amounts.

A. Yes, sir.

Q. All right. And did you know that Mr. Scrushy  
supported all sorts of causes through his  
philanthropy in the state of Alabama?

A. I'm not aware of all that he supports, no,

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14 sir, but I'm aware of some.

15 Q. You mentioned in I believe your direct  
16 examination -- might have been cross -- that  
17 you knew of certain projects that had  
18 Mr. Scrushy's name attached to it. Did I  
19 hear that correctly?

20 A. Yes, sir.

21 Q. What kind of projects did you know about?

22 A. I've seen them on libraries, highways,  
23 perhaps other things.

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1 Q. Did you know about contributions to any of  
2 the colleges?

3 A. I'm not aware of any specifically.

4 Q. All right. Now, how long have you lived in  
5 the state of Alabama?

6 A. 25 years probably.

7 Q. And when you came to the state of Alabama,  
8 where did you come from?

9 A. Cullman, Alabama.

10 Q. All right. I'm saying --

11 A. Excuse me. From Florida.

12 Q. Okay. And is that where you were raised?

13 A. I was born and raised in Cullman, Alabama,  
14 went to Florida for a while and back to  
15 Cullman, Alabama.

16 Q. All right. And is it fair to say that  
17 throughout the course of your life in  
18 Alabama, you had a pretty good awareness of  
19 what was going on politically in the state of  
20 Alabama?

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4 A. That is correct.

5 Q. You know that Richard Scrushy at the time  
6 that these events occurred was the chief  
7 executive officer of HealthSouth; is that  
8 right?

9 A. As I recall, yes, sir.

10 Q. All right. And, obviously, because of your  
11 relationship with Governor Siegelman, you  
12 knew his political history leading up to the  
13 events in question here, correct?

14 A. Governor Siegelman's history?

15 Q. Yes, sir.

16 A. Yes, sir.

17 Q. Because you lived it with him, right?

18 A. Governor Siegelman's political career? No,  
19 sir.

20 Q. Okay. well, you lived a good portion of it.  
21 Let me put it that way.

22 A. Recent years, yes, sir.

23 Q. Tell me the portion of Governor Siegelman's

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1 political career that you did not live.

2 A. Prior to 1994.

3 Q. Well, what was that? What positions did he  
4 hold in that period of time that you were not  
5 involved?

6 A. Attorney General and Secretary of State.

7 Q. Now, Attorney General is the chief law  
8 enforcement officer for the State of Alabama;  
9 isn't that correct?

10 A. That is correct.

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11 Q. All right. And people like Mr. Fitzpatrick  
12 here, who is an Assistant Attorney General  
13 with the State of Alabama, he works for that  
14 office, doesn't he?

15 A. I'd have to take your word for that,  
16 Mr. Leach. I'm not sure where Mr. -- where  
17 Mr. Fitzpatrick works.

18 Q. Were you aware of cases that were prosecuted  
19 during the time that the Governor was  
20 attorney general for the State of Alabama?  
21 Did you just know that cases were being  
22 prosecuted in his name?

23 A. He was attorney general in 1986, Mr. Leach.

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1 I was in high school. I didn't pay a lot of  
2 attention to what cases were being prosecuted  
3 in Alabama.

4 Q. And when were you in high school, were you in  
5 Florida or were you in Alabama?

6 A. Cullman, Alabama.

7 Q. All right. What other offices did he hold  
8 before you knew him?

9 A. Secretary of State.

10 Q. All right. And were you aware of the fact  
11 that he had actually gone to law school?

12 A. Yes, sir.

13 Q. Do you know where he went to law school?

14 A. Georgetown and Oxford, I believe.

15 Q. All right. And Oxford is where?

16 A. It's not in Mississippi.

17 Q. It's in England.

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18 A. Yes, sir.

19 Q. Okay. Now, once you do come into the  
20 Governor's life, what office does he have  
21 right at that moment when you meet him?

22 A. When I first met Governor Siegelman?

23 Q. Yes, sir.

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1 A. He was not in office.

2 Q. All right. What office had he just left?

3 A. He was attorney general before I met him.

4 Q. All right. What office did he go into?

5 A. Lieutenant governor.

6 Q. How long was he lieutenant governor?

7 A. For four years.

8 Q. And then what position did he hold after  
9 that?

10 A. Governor.

11 Q. In terms of experience of a politician, can  
12 you tell me anyone you know that has more  
13 experience in the state of Alabama than  
14 Governor Siegelman?

15 A. No one.

16 Q. In terms of his political ability, can you  
17 tell me if you know any political operative  
18 that is better than Governor Siegelman, in  
19 your opinion?

20 A. No one.

21 Q. Now, since we've established that he's a  
22 lawyer, formal attorney general, a great  
23 political operative, would you say that he is

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1 knowledgeable of the law as it relates to how  
2 a politician needs to operate in office?

3 A. Yes, sir, I believe he is aware.

4 Q. All right. And is it fair to say that one of  
5 the things that anyone in political office  
6 has to be aware of is the fact that you  
7 cannot trade on your office? would you agree  
8 with me on that, that that is against the  
9 law?

10 A. Yes, sir.

11 Q. All right. Now, in an average day at the  
12 Governor's Office, how many people would  
13 Governor Siegelman see that wanted something  
14 from him?

15 A. As many as we could fit in a day.

16 Q. And what would be the number of people that  
17 would come into the office, want to shake  
18 this man's hand, and spend ten minutes with  
19 him to either get his support for something  
20 or his opposition to stop something? How  
21 many would that be?

22 A. Over the three years I was there, probably  
23 hundreds.

38

1 Q. Could it be thousands?

2 A. I think that would be a stretch.

3 Q. Well, let's break it down by a day. How many  
4 could you get in a day?

5 A. Maybe five to ten.

6 Q. Would that include people at the State House,



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14 A. No, sir, I don't believe he was told he was a  
15 target.

16 Q. Okay. And you wouldn't tell anyone. I mean,  
17 this isn't unique to Richard Scrushy. You  
18 wouldn't tell any of the people that  
19 contribute that they've been targeted for a  
20 certain sum?

21 A. I believe that's correct, sir.

22 Q. All right. And the whole idea behind that is  
23 when a telephone call is made and the target,

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1 let's say, is \$50,000, but the individual  
2 indicates that they'll only go ten, do you  
3 say, well, no thanks, clink, we're done, no  
4 thanks? What happens?

5 A. Sometimes you keep calling.

6 Q. Well, do you take the ten? That's my point.

7 A. If you have to.

8 Q. All right. I want to talk a little bit in  
9 terms of the history leading to the lottery  
10 just so the jury can have the time frames  
11 correct. Governor Siegelman is elected in  
12 November of 1998, correct?

13 A. Yes, sir.

14 Q. And how long is it before he gets the lottery  
15 issue before the voters? How fast in terms  
16 of the priorities of the administration?

17 A. It was his top priority.

18 Q. All right. What did he have to do to get  
19 that issue to the voters?

20 A. The best I can recall, he had to move it

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21 through the Alabama Legislature first.

22 Q. All right. And when is the first time that  
23 the Alabama Legislature met after Governor

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1 Siegelman was sworn in as governor of the  
2 state?

3 A. Can I give you a season?

4 Q. You can give me whatever fits for you.

5 A. Late winter, early spring.

6 Q. All right. So can you tell me when he is  
7 sworn in?

8 A. January '99.

9 Q. Was the legislation passed before or after he  
10 was sworn in?

11 A. I would guess after, Mr. Leach.

12 Q. Okay. Now, in order to establish the lottery  
13 foundation, was a corporation established?  
14 Was it incorporated?

15 A. The Alabama Education Lottery was created.  
16 Whether or not it was a corporation, I can't  
17 say for sure.

18 Q. Do you ever recall seeing articles of  
19 incorporation?

20 MR. LEACH: This is #91.

21 A. I might remember them if you would share them  
22 with me.

23 MR. LEACH: If I may approach, Your

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1 Honor.

2 THE COURT: You may.

3 Q. I'm going to show you what's marked as  
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